**MINUTES**
**of the**
**THIRD MEETING**
**of the**
**TRANSPORTATION INFRASTRUCTURE REVENUE SUBCOMMITTEE**

**August 6, 2014**
**Room 307, State Capitol**
**Santa Fe**

The third meeting of the Transportation Infrastructure Revenue Subcommittee (TRANS) was held as a joint meeting with the Revenue Stabilization and Tax Policy Committee (RSTP). The meeting was called to order at 9:03 a.m. on Wednesday, August 6, 2014, in Room 307 of the State Capitol by Representative Roberto "Bobby" J. Gonzales, chair, TRANS.

| **Present** | **Absent** |
|---|---|
| Rep. Roberto "Bobby" J. Gonzales, Chair | Sen. Timothy M. Keller |
| Sen. John Arthur Smith, Vice Chair | Rep. Patricia A. Lundstrom |
| Rep. Ernest H. Chavez | |
| Sen. Lee S. Cotter | |
| Sen. Ron Griggs | |
| Rep. Larry A. Larrañaga | |
| Rep. Jane E. Powdrell-Culbert | |
| Sen. Clemente Sanchez | |

**Advisory Members**

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| Rep. Cathrynn N. Brown | Sen. Jacob R. Candelaria |
| Sen. Carlos R. Cisneros | Rep. Nathan "Nate" Cote |
| Rep. Sharon Clahchischilliage | Sen. William H. Payne |
| Rep. Anna M. Crook | Sen. William E. Sharer |
| Rep. Edward C. Sandoval | |

**Staff**
Mark Edwards, Legislative Council Service (LCS)
Peter Kovnat, LCS
Randy Taylor, LCS

**Guests**
The guest list is in the meeting file.

**Handouts**
Handouts and other written testimony are in the meeting file.

**Wednesday, August 6**

**Status of Congressional Action on the Federal Highway Trust Fund (HTF) and Implications for New Mexico's Highway Program Funding**

Tom Church, secretary, Department of Transportation (DOT), stated that there had been differing House and Senate proposals in Congress for funding the federal HTF. However, Congress had been able to pass a bill that funds the HTF through May 2015. However, he indicated, this is a relatively short-term solution. Secretary Church stated that if Congress does not craft long-term funding legislation before June 2015, New Mexico will have to cut back on its road spending. Secretary Church stated that the DOT has not yet taken any drastic steps regarding reducing spending. Rather, the DOT has been able to move $12 million within DOT programs to use for striping, signage and overlays throughout the state.

In the following discussion, Secretary Church raised two concerns about how the federal process affects DOT programs. First, the DOT uses federal funding to help service debt, and there is a major payment due in June 2015. If Congress has not passed a long-term funding bill for the HTF by that date, a large portion of the DOT's state funding will have to be redirected to debt service. Second, the lack of certainty in federal funding is affecting the DOT's planning process. The DOT may not begin designing projects until funding for the project is identified. The standard planning and design process takes three years, and the funding issue creates a delay in road projects. He noted that one way to shorten the process is to use design-build techniques, but those must be authorized by the legislature on a project-by-project basis.

At this point, Senator Griggs proffered a concept for dedicating additional state funds to New Mexico's road construction and other public infrastructure needs. He suggested that $100 million of annual severance tax bond revenues for each of the next four years could be directed toward statewide construction programs. In the concept he raised, two years of this funding would be dedicated to state roads and one year each would be directed to public building construction and to water projects. In the ensuing discussion, RSTP and TRANS members raised questions about how projects would be prioritized. A separate issue raised by a committee member was whether the proposal was large enough to address the problem. It was noted that the DOT has a much larger shortfall in funding than would be covered by the proposal, including a "debt-cliff" payment due at the end of 2025.

**Wyoming: An Approach for Enacting a Comprehensive Response to Transportation Funding**

Wyoming State Representative Michael K. Madden, chair, House Revenue Committee, Wyoming State House of Representatives, began by comparing Wyoming's and New Mexico's transportation funding and financing. Representative Madden noted that New Mexico and Wyoming have comparatively low vehicle fuel taxes, which he referred to as user fees. Also, the transportation departments in both states have been rated nationally within the top five for cost efficiency. (See the Reason Foundation report, handout 2A.) Further, both states supplement their fuel tax revenue for road construction programs. Wyoming supplements with mineral royalties and commercial trucking registration fees; New Mexico relies on a weight-distance tax instead.

Representative Madden then described some ideas that were successful in Wyoming for increasing fuel taxes. First, he argued that fuel taxes are fair user fees; if one does not use the roads, one does not pay the fuel tax that pays for their maintenance or construction. Second, well-constructed and well-maintained roads save money in the long run by reducing damage to vehicles. Finally, he noted that fuel tax is typically a set fee per gallon, unlike a sales tax, which is a percentage of the cost. He argued that raising a fuel tax allows competing vendors to adjust the sale cost according to their own business plans. He was of the opinion that the fuel tax increase enacted by Wyoming resulted in a much lower increase in cost to the consumer than if it had been a sales tax.

Representative Madden next explained the process for how fuel tax legislation was promoted in Wyoming. Representative Madden stressed that timing can be very important for a public discussion regarding fuel taxes. The legislative leadership in Wyoming had been supporting a variety of legislation to increase road funding for several years, but without much success. The effort gained momentum when a coalition of taxpayer and industry groups in Wyoming started publicly supporting the idea of raising the fuel tax. Representative Madden believes the coalition's efforts influenced public opinion. (See handouts 2B, 2C and 2D for publications by the Wyoming coalition.)

Representative Madden explained that even with favorable public dialogue, the effort required an intensive communication effort by Wyoming's legislative leadership to keep in contact with the governor and with each individual legislator. Evidently, the effort did not get strong support from Wyoming's governor; Representative Madden stressed that the request to Wyoming's governor was simply not to veto the legislation should it pass the legislature.

Representative Madden then summarized Wyoming's experience over the past year since raising its fuel tax rate. Representative Madden expressed his opinion that the results over the past year have mitigated unfounded fears about raising the rate. Further, revenues from fuel taxes have been higher than projections. He explained that the greater revenues stemmed from two processes: 1) retail businesses with multiple locations across state lines had been internalizing the lower fuel fees in Wyoming but charging similar prices at all their locations; and 2) the fuel tax payment rules for commercial truckers under the International Fuel Tax Agreement, commonly referred to as IFTA, had been depressing commercial fuel sales in Wyoming although its fuel tax was significantly lower than in neighboring states.

During the discussion concluding his presentation, Representative Madden expanded upon two distinctions between Wyoming and New Mexico. Unlike New Mexico, Wyoming does not bond for any road construction or maintenance. This limited some of the options for road financing. Conversely, Wyoming has a constitutional provision requiring that fuel taxes be spent on roads. Representative Madden indicated that this provision was helpful in gaining public support for the fuel tax legislation.

Representative Madden also noted that Wyoming used to have a weight-distance tax as New Mexico currently does. Wyoming's trucking industry lobbied the legislature to switch to higher vehicle registration fees because complying with the weight-distance tax was too cumbersome for truckers. He remarked that New Mexico may have to drastically increase its commercial truck registration fee in order to make the same change and keep it revenue-neutral.

As a final note, Representative Madden remarked that Wyoming's alternative for needed road funds would have been to use general fund money. He argued that using general fund money for roads would have given an unfair benefit to tourists, cross-border commuters and other road users who do not pay taxes into general fund.

**North Dakota: Meeting the Highway Funding Needs of an Oil Boom**

North Dakota State Senator Ray Holmberg, chair, Senate Appropriations Committee, North Dakota State Senate, began his presentation by describing North Dakota's recent economic growth. North Dakota has ranked first in the United States in personal income growth in three of the last four years. An oil boom in the western part of the state has been responsible for much of the growth. The oil industry accounts for 15% of the work force in North Dakota and about 30% of all wages paid. The state is producing approximately one million barrels of oil a day. Senator Holmberg cited a Moody's analysis that transportation infrastructure health will ultimately decide how long North Dakota can continue to grow.

Senator Holmberg proceeded to explain that North Dakotans are historically averse to raising tax rates and have resisted efforts to raise rates during the recent growth, reasoning that tax revenues are high enough to fund the state's needs already. Rather than raise fuel tax rates, the North Dakota Legislature appropriated $1.2 billion from the state's general fund to the state's highway fund specifically for projects in areas affected by oil and gas development. Senator Holmberg stated that the appropriation was one of the first things the legislature did. He noted that this was important because permafrost conditions impose time limits during North Dakota's construction season.

Senator Holmberg told the RSTP and TRANS members that appropriating from the general fund had been a challenge. The North Dakota Legislature had not diverted funds from the general fund to the highway fund before, so legislators were reluctant to do so for the first time. Legislators were also reluctant to earmark funds for certain geographic areas, thinking that doing so could be a slippery slope toward dictating how the North Dakota transportation department spends its appropriations. Further, there was a concern that appropriating from the general fund would also encourage other groups to lobby for special interest appropriations in the future.

During a general discussion following these remarks, Senator Holmberg explained that, unlike New Mexico, North Dakota does not have a highway commission. It simply has a secretary of transportation, appointed by the governor, who administers North Dakota's transportation department.

Senator Holmberg also expounded on some of the challenges of having an oil boom. On the one hand, North Dakota has had such a large increase in state revenues that the legislature has had to create mechanisms to protect some revenues as a hedge against future downturns. The state has created a Legacy Fund that receives 30% of all tax revenue derived from oil and natural gas extraction. The legislature may not appropriate from the fund until 2017, and it may only do so after that with a two-thirds' vote. On a negative note, the oil boom has created some problems for retirees in oil-producing counties because the cost of living has increased.

Responding to questions from a committee member about oil development, Senator Holmberg explained that North Dakota had developed a compact with one of its oil-producing Native American tribes regarding production regulations and that this helped drive on-reservation oil development. He responded to a question about the proposed Keystone pipeline, saying it would be helpful in getting North Dakota's oil to market. He noted that the alternative is to use freight rail.

**New Mexico Highway Funding — Comparison Projections with Different Fee Structures**

Secretary Church and Clinton Turner, chief economist, DOT, began by explaining to the RSTP and TRANS that the State Road Fund is supported by four revenue streams: (1) a gasoline tax; (2) vehicle registration fees; (3) a diesel fuel tax; and (4) a weight-distance fee. The first two taxes/fees are paid mostly by families, and the last two are paid mostly by the commercial trucking industry in New Mexico.

Secretary Church and Mr. Turner then directed the members' attention to the handout they provided, which shows how increases in different tax rates and fees would affect the State Road Fund. Mr. Turner stated that one-cent increases in the gasoline and diesel taxes would increase revenues by $8.7 million and $5 million, respectively. Increasing vehicle registration taxes by 10% would increase revenues by $7.8 million, and increasing the weight-distance tax by 10% would increase revenues by $8 million. Additionally, Secretary Church pointed out that abolishing the weight-distance tax would require raising vehicle registration fees to around $3,000 a year in order to remain revenue-neutral.

After these opening remarks, Secretary Church gave an overview of the DOT's financial status. He said the indications are that federal funding will remain flat and that state road revenues will increase 2% in the current fiscal year. With those funding limits in mind, he pointed out that 19% of the DOT's annual budget is dedicated to debt service. Therefore, the DOT's focus has of necessity been on maintaining roads rather than building new ones. It would require major new funding to allow for new construction.

Delving into the debt issue, Secretary Church explained that the DOT's total debt is $1.9 billion, including principal and interest. A complicating issue is that a significant portion of the debt is in the form of a floating interest rate on the bonds issued for the Rail Runner, he noted. He said it would require a $109 penalty payment to reconfigure the floating rate into a fixed rate.

Regarding the weight-distance fees, Secretary Church reported that the DOT has formed a working group with the Department of Public Safety and the Taxation and Revenue Department to investigate compliance issues with the weight-distance and oversize-truck payments. The group plans on bringing a recommendation to the next legislative session.

After Secretary Church and Mr. Turner made their presentation, the RSTP adjourned at 12:48 p.m.

*Motion*

A motion to approve the minutes from the TRANS meeting on July 23, 2014 was adopted without objection.

**McKinley County Bridge Conditions — Impacts on Getting Children to School**

Jeff Irving, road superintendent, McKinley County; Jeff Bond, director of transportation, Gallup-McKinley County School District (GMCSD); and William D. Noe, transportation/bus barn supervisor, GMCSD, gave a brief history of the bridges in McKinley County. Many of the bridges in McKinley County were bought as military surplus many years ago and were installed without engineering drawings. Although the county has maintained the bridges since they were purchased, more than 50 bridges now have load ratings lower than 10 tons, which means that most of the county's school buses cannot cross those bridges.

McKinley County negotiated with the Public Education Department for the replacement of five standard buses with smaller buses that are able to cross low-load-rated bridges, but they are not enough to completely address the problem. Mr. Irving directed the subcommittee's attention to a bridge inventory in the presenters' handout. The list shows the location and priority ranking of bridges in McKinley County. Sixteen bridges ranked "A" cannot carry buses or emergency vehicles; seven bridges ranked "B" cannot carry buses and have no alternate routes around the bridges; and other bridges cannot carry school buses but have an alternate route to avoid the bridge. Mr. Irving also referred to cost estimates at the back of the handout. Mr. Irving estimates the cost of an analysis of each bridge to be $150,000 to $250,000 and the actual cost of constructing the bridges to be $1 million to $2 million dollars.

The TRANS members then engaged in a general discussion in which three issues were examined. First, concerns were raised about whether the replacement of the five buses was enough to assure that students are getting to school and about the additional burdens on the school system to provide bus service. The presenters explained that the standard buses could carry up to 71 passengers, but the smaller replacements can only carry 34 passengers. For full bus loads, that would mean doubling the number of bus routes to carry the same number of students. They voiced concerns about whether the number of replacements was adequate to meet the demand. It was also noted by a TRANS member that the school system would have to pay for additional drivers if each route had to be driven twice.

A second issue raised was about jurisdiction. The presenters stated that a majority of the bridges and affected students are on tribal land. They noted that the Navajo transportation department has cooperated with the county to study the bridges and to determine the legal status of rights of way for the bridges. Responding to a question from a subcommittee member, the presenters said that the Navajo transportation department has not offered any funds to improve or construct bridges.

Responding to a question about whether many of these bridges simply need reinforcing additions instead of full replacement, Mr. Irving stated that this might very well be true. However, without an engineering analysis, it is not possible to determine where that would be feasible. At this point, Ray Trujillo, bureau chief, Bridge Design Bureau, DOT, informed the subcommittee that the DOT maintains two contracts for bridge assessment load rating, one with the University of New Mexico and one with New Mexico State University, for $150,000 each per year.

*Motion*

A motion was made and approved without objection to draft a committee funding bill to provide for an engineering evaluation for safety reinforcement of McKinley County bridges.

**Alternative Project Delivery Task Force (APDTF)**

Albert M. Thomas, director, American Council of Engineering Companies, and senior vice president, Bohannan Huston, Inc., greeted the subcommittee and explained that his goal was to introduce alternatives to the design-bid-build process and asked the subcommittee to amend the Procurement Code to include those alternative delivery methods. Mr. Thomas stated that the APDTF proposes adding three alternative project-delivery methods to the Procurement Code: (1) design-build; (2) construction manager general contractor (CMGC); and (3) job-order contracting (JOC).

Mr. Thomas stated that alternative project-delivery methods should be included in the Procurement Code because of increased public demand that roads be improved and that they be improved quickly. Mr. Thomas also stated that alternative project-delivery methods will improve quality, cost-effectiveness and safety in the long run. On a national level, alternative project-delivery methods are being used more widely, and all but 12 states allow design-build.

Mr. Thomas next explained the process of design-build. Design-build differs from traditional project delivery in that one contract is awarded to one bidder to both design and complete the project. In this way, risk is shifted to the bidder and the process is more efficient, allowing for one round of bidding. Mr. Thomas stated that design-build may be used for some projects in New Mexico but must be authorized by the legislature for road maintenance or construction. Four road construction or maintenance projects in New Mexico have used design-build, and each one was completed ahead of schedule.

Adam Triolo, president, AUI, Inc., and president, Associated Contractors of New Mexico, next described CMGC and a method related to it called construction manager at risk (CMR). Under CMR, subcontractors complete most of the project work. Under CMGC, the prime contractor completes most of the work. The benefits of CMGC are that the designer and contractor work and plan together early in the process, leading to greater cooperation between the contractor and designer, early risk identification and mitigation and transparent estimating. Mr. Triolo cited a project in Phoenix, Arizona, as an example of successful CMGC contracting. In that instance, the U.S. Environmental Protection Agency had declared that Phoenix's sewage system was inadequate. The city was given two years to bring the system in line with federal regulations, and it was able to meet the deadline by using CMGC.

Mr. Thomas then explained JOC, the last contracting alternative. Under JOC, an owner creates a base contract with one or more subcontractors for small, routine projects that can be completed relatively easily. The subcontractors are then "on call" on an as-needed basis by the owner for a certain number of jobs. This method increases flexibility in the procurement process and reduces project completion times. Currently, JOC is used primarily for water or wastewater projects.

In an ensuing general discussion, some concerns were raised by TRANS members regarding how much weight the price of a project is given within the three alternative project delivery methods. Each method prioritizes qualifications and value, separate from the final price to some degree. The presenters explained that national data collected so far show that alternative delivery methods cost as much or less than traditional procurement methods. The presenters further clarified that the APDTF intends for design-bid-build to remain the predominant method of project delivery, but it asks that the Procurement Code allow agencies to choose an alternative delivery method if the circumstances call for it.

A second concern raised by subcommittee members was whether smaller companies can compete for design-build contracts. The response from the presenters was that smaller companies may subcontract with a larger contractor to complete some of the work. The presenters further stated that the APDTF is currently compiling data on the four design-build contracts used by the DOT so far to determine exactly how much of the contracted work was done by small businesses.

**Adjournment**

There being no further business before the TRANS, the meeting adjourned at 3:34 p.m.